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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/272,911	03/19/1999	TAKESHI KIKUCHI	25484.00715	6247
7590	07/07/2004			EXAMINER
DAVID L. FEHRMAN MORRISON & FOERSTER 555 WEST FIFTH STREET SUITE 350 LOS ANGELES, CA 90013-1024			STEVENS, ROBERTA A	
			ART UNIT	PAPER NUMBER
			2665	19

DATE MAILED: 07/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/272,911	KIKUCHI, TAKESHI	
	Examiner	Art Unit	
	Roberta A Stevens	2665	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 06 April 2004.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,2,4,5,10,11,13,14,19-23 and 28 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1,2,4,5,10,13,14,19,21-23 and 28 is/are rejected.
 7) Claim(s) 11 and 20 is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1, 2, 4, 10, 13, 19, 21, 22 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sekine (U.S. 6137825) in view of Kondo (U.S. 5835138).

3. Regarding claim 1, Sekine teaches (figure 5) a communication device comprising:
a data amount controller which controls the amount of the digital audio data to be transmitted in accordance with the transfer rate; and a transmitter which transmits the audio data whose data amount is controlled by data amount controller and the media data other than the audio data and data amount information indicating data amount of the audio data controlled by data amount controller (col. 1, lines 59 – col. 2, lines 14).

4. Sekine does not teach a transfer rate estimator which estimates transfer rate of media data other than digital audio data before transmission in accordance with a communication rate of a communication network

5. Kondo teaches (figure 4 and col. 6, lines 1-21) estimating the generation of data based on the buffer amount. It would have been obvious to one of ordinary skill in this art to adapt to Sekine's system Kondo's data generation estimator to maintain QoS within the system in avoiding congestion within the system.

6. Regarding claim 2, Sekine teaches (figures 5) an input device which inputs the audio data and the media data to the communication device.

7. Regarding claims 4, 13 and 22, Kondo teaches (col. 6, lines 1-21) the data amount controller thins out the audio data to control its data amount.

8. Regarding claim 10, Sekine teaches (figure 5) a communications method comprising: controlling data amount of digital audio data to be transmitted in accordance with the transfer rate; and transmitting the audio data whose data amount is controlled by the controlling step, the media data and data amount information (col. 1, lines 59 – col. 2, lines 14).

9. Sekine does not teach a transfer rate estimator which estimates transfer rate of media data other than digital audio data before transmission in accordance with a communication rate of a communication network

10. Kondo teaches (figure 4 and col. 6, lines 1-21) estimating the generation of data based on the buffer amount. It would have been obvious to one of ordinary skill in this art to adapt to Sekine's system Kondos data generation estimator to maintain QoS within the system in avoiding congestion within the system.

11. Regarding claim 19, Sekine teaches (figures 5) controlling data amount of digital audio data to be transmitted in accordance with the estimated transfer rate; and transmitting the audio data whose data amount is controlled by the controlling step, the media data and data amount information (col. 1, lines 59 – col. 2, lines 14).

12. Sekine does not teach a recording medium storing a program which causes a computer to estimating transfer rate of media data before transmission in accordance with a communication rate of a communication network.

13. Kondo teaches (figure 4 and col. 6, lines 1-21) estimating the generation of data based on the buffer amount. It would have been obvious to one of ordinary skill in this art to adapt to Sekine's system Kondos data generation estimator to maintain QoS within the system in avoiding congestion within the system.

14. Regarding claim 21, Kondo teaches (col. 6, lines 1-21) the transmitting step transmits data amount information indicating whether the amount of data is controlled by the controlling step together with the audio data.

15. Regarding claim 28, Sekine teaches (figure 5) a communication device comprising: a data amount controlling means for controlling the amount of the digital audio data to be transmitted in accordance with the transfer rate estimated; and a transmission means which transmits the audio data whose data amount is controlled by data amount controlling means and the media data other than the audio data and data amount information indicating data amount of the audio data controlled by the data amount controlling means (col. 1, lines 59 – col. 2, lines 14).

16. Sekine does not teach a transfer rate estimation means for estimating transfer rate of media data other than digital audio data before transmission in accordance with a communication rate of a communication network;

17. Kondo teaches (figure 4 and col. 6, lines 1-21) estimating the generation of data based on the buffer amount. It would have been obvious to one of ordinary skill in this art to adapt to Sekine's system Kondos data generation estimator to maintain QoS within the system in avoiding congestion within the system.

18. Claims 5, 14 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sekine (U.S. 6137825) in view of Kondo (U.S. 5835138) and further in view of Tokuhiro.

19. As mentioned above Sekine and Kondo teach all of the limitations of claim 1, 10 and 19.

20. Sekine and Kondo do not teach MIDI data.

21. Tokuhiro teaches (column 3) the media data is MIDI data. It would have been obvious to one of ordinary skill in this art to adapt to Sekine and Kondo's system MIDI data to broaden the scope of the system allowing for transmission of different types of data.

Allowable Subject Matter

22. Claims 11 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

23. Any inquiry concerning the communication or earlier communications from the examiner should be directed to Roberta Stevens whose telephone number is (703) 308-6607. The examiner can normally be reached on Monday through Friday from 9:00 am to 5:30 p.m.
24. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor can be reached on (703) 308-6602.
25. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is (703) 305-3900.

26. **Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks

Washington, D.C. 20231

or faxed to: (703) 872-9306

For informal draft communications, please label "PROPOSED" or "DRAFT"

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA. Sixth Floor (Receptionist).

Roberta A. Stevens

Patent Examiner

06-25-04



STEVEN NGUYEN
PRIMARY EXAMINER